

**House Bill 2101**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 25.13, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (a-1) and (b-1) to read as follows:

(a) In this section, "location" means the designated physical address of the wine and beer retailer's permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

(a-1) A holder of a wine and beer retailer's permit may be issued a food and beverage certificate by the commission if the commission finds that the receipts from the sale of alcoholic beverages by the permit holder at the location are 60 percent or less of the total receipts from the location [food service is the primary business being operated on the premises by the permittee].

(b) ~~Δ [An applicant or holder of a]~~ food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location [as the primary business on the premises for which a food and beverage certificate has been issued]. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b) [the requirement that food service be the primary business on the premises].

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SECTION 1. Same as House version.

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(d) A certificate issued under this section expires on the expiration of the primary wine and beer retailer's permit. A certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1) ~~[not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises].~~ On ~~[The commission may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon]~~ finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the permittee's wine and beer retailer's permit. The holder of a beer and wine retailer's permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied.

SECTION 2. Section 28.18, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (b-1) to read as follows:

(a) In this section, "location" means the designated physical address of the mixed beverage permit and includes all areas at the address where the permit holder may sell or deliver alcoholic beverages for immediate consumption regardless of

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whether some of those areas are occupied by other businesses.

(a-1) A holder of a mixed beverage permit may be issued a food and beverage certificate by the commission if the commission finds that the [gross] receipts from the sale of alcoholic [of mixed] beverages [sold] by the permit holder at the location are 60 [50] percent or less of the total [gross] receipts from the location [premises].

(b) ~~A~~ [An applicant or holder of a] food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location [on the premises for which a food and beverage certificate has been issued]. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b).

(e) A certificate issued under this section expires on the expiration of the primary mixed beverage permit. ~~A~~ certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1). On finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the permittee's mixed beverage permit.

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A mixed beverage permit issued in an area where the legal sale of mixed beverages was authorized by a local option election under Section 501.035(b)(9), Election Code, is canceled by operation of law if the food and beverage certificate is canceled or is not renewed. The [A] holder of a mixed beverage permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied [determination of the comptroller under Subsection (d)].

SECTION 3. Section 32.23, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (b-1) to read as follows:

(a) In this section, "location" means the designated physical address of the private club registration permit and includes all areas at the address where the permit holder may serve or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

(a-1) A holder of a private club registration permit may be issued a food and beverage certificate by the commission if the commission finds that the [gross] receipts from the service of alcoholic [mixed] beverages [served] by the permit holder at the location are 60 [50] percent or less of the total [gross] receipts from the location [premises].

(b) ~~A [An applicant or holder of a]~~ food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at

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the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location [on the premises for which a food and beverage certificate has been issued]. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b).

(e) A certificate issued under this section expires on the expiration of the primary private club registration permit. A certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1). On finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the permittee's private club registration permit. The [A] holder of a private club registration permit whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied [determination of the comptroller under Subsection (d)].

SECTION 4. Section 69.16, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and

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adding Subsections (a-1) and (b-1) to read as follows:

(a) In this section, "location" means the designated physical address of the retail dealer's on-premise license and includes all areas at the address where the license holder may sell or deliver alcoholic beverages for immediate consumption regardless of whether some of those areas are occupied by other businesses.

(a-1) A holder of a retail dealer's on-premise license may be issued a food and beverage certificate by the commission if the commission finds that the receipts from the sale of alcoholic beverages by the license holder at the location are 60 percent or less of the total receipts from the location ~~food service is the primary business being operated on the premises by the permittee].~~

(b) ~~A~~ [An applicant or holder of a] food and beverage certificate may not be issued unless the location has permanent [shall have] food service facilities for the preparation and service of multiple entrees for consumption at the location.

(b-1) The commission shall adopt rules requiring [as necessary to assure that] the holder of a food and beverage certificate to assure that permanent [maintains] food service facilities for the preparation and service of multiple entrees for consumption at the location are available at the location [as the primary business on the premises for which a food and beverage certificate has been issued]. The commission may exempt licensees ~~[permittees]~~ who are concessionaires in public entertainment venues such as sports stadiums and convention centers from Subsections (a-1) and (b) ~~[the requirement that food service be the primary business on the premises].~~

(d) A certificate issued under this section expires on the

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expiration of the primary retail dealer's on-premise license. A certificate may be canceled at any time, and the renewal of a certificate may be denied, if the commission finds that the holder of the certificate is in violation of Subsection (a-1) or (b) or a rule adopted under Subsection (b-1) ~~[not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises].~~ On ~~[The commission may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon]~~ finding that the licensee [permittee] knowingly operated under a food and beverage certificate while not complying with this section or a rule adopted under Subsection (b-1), the commission may cancel or deny the renewal of the licensee's retail dealer's on-premise license. The holder of a retail dealer's on-premise license whose certificate has been canceled or who is denied renewal of a certificate under this subsection may not apply for a new certificate until the day after the first anniversary of the date the certificate was canceled or the renewal of the certificate was denied.

SECTION 5. Sections 28.18(d) and 32.23(d), Alcoholic Beverage Code, are repealed.

SECTION 6. (a) As soon as practicable after the effective date of this Act, the Texas Alcoholic Beverage Commission shall adopt the rules necessary to implement this Act.

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SECTION 5. (a) Sections 28.18(d) and 32.23(d), Alcoholic Beverage Code, are repealed.  
(b) Section 411.204(e), Government Code, is repealed.

SECTION 6. Same as House version.

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(b) The changes in law made by this Act apply only to an application for a food and beverage certificate that is filed on or after the effective date of the rules adopted under Subsection (a) of this section.

SECTION 7. This Act takes effect September 1, 2017.

SENATE VERSION (CS)

SECTION 7. Same as House version.

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